

US EPA ARCHIVE DOCUMENT

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION III**
1650 Arch Street, Philadelphia, Pennsylvania 19103

In The Matter of:	:	Proceeding Under Section 309(a) of the
	:	Clean Water Act, 33 U.S.C. § 1319(a)
FPNA Farms Incorporated	:	
5753 Neal Parker Road	:	Docket No. CWA-03-2010-0400DN
Oak Hall, Virginia 23416	:	
Respondent	:	FINDINGS OF VIOLATION
	:	AND
	:	ORDER FOR COMPLIANCE

I. PRELIMINARY STATEMENT

1. This Findings of Violation and Order for Compliance (“Order”) is issued under the authority vested with the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who, in turn, has delegated it to the Director of the Water Protection Division (“Complainant”).

II. STATUTORY AND REGULATORY AUTHORITY

2. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
3. Section 402 of the CWA, 33 U.S.C. § 1342, provides for the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits which allow the discharge of pollutants under specified conditions.
4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”
6. “Point Source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

7. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
8. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
9. “Large CAFO” is defined at 40 C.F.R. § 122.23(b)(4)(x) as an AFO that stables or confines as many or more than 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
10. “Waters of the United States” are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.
11. “Process wastewater” is defined in 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities, direct contact swimming, washing, or spray control of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”
12. “Manure” is defined by 40 C.F.R. § 122.23(b)(5) to include “manure, bedding, compost, and raw materials or materials commingled with manure or set aside for disposal.”
13. The Department of Environmental Quality (“DEQ”) is the agency within the Commonwealth of Virginia that is authorized to administer the federal NPDES Program through Virginia Pollutant Discharge Elimination System (“VPDES”) permits. EPA maintains concurrent enforcement authority with authorized state NPDES programs to address violations of the CWA.

III. FACTUAL BACKGROUND

14. FPNA Farm Incorporated (“Respondent”) owns a parcel of land located at 5753 Neal Parker Road, Oak Hall, Virginia 23416 (referred to as the “Facility”) and operates a broiler chicken grow-out operation at the Facility.
15. On July 19, 2010, EPA representatives conducted a CWA inspection at the Facility.
16. Based upon statements made by Mr. Muhammed Sheikh, who manages the daily operations at the Facility, Respondent stables or confines approximately 164,000 broiler chickens in six poultry houses on the Facility for at least 45 days or more in any twelve-month period.
17. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the Facility where broiler chickens are confined.

18. During the inspection on July 19, 2010, the EPA representatives observed:
- Several drainage pathways in close proximity to the poultry houses and the poultry houses' ventilation fans;
 - A ditch ("Ditch 1") running approximately 1,230 feet from south to north along the east side of House 1 and House 5, making a 90-degree turn west, running approximately 425 feet from east to west behind House 5 and House 6, making a 90-degree turn north, and leaving the Facility;
 - A ditch ("Ditch 2") running approximately 1,150 feet from south to north along the west side of House 1 and House 5 and along the east side of House 2 and House 6 before entering Ditch 1;
 - Poultry manure on the ground and on the concrete pads at the front and back of House 5, approximately 40 feet from Ditch 1 and approximately 45 feet from Ditch 2;
 - Poultry manure on the ground and on the concrete pad at the back of House 6, approximately 30 feet from Ditch 2;
 - Ventilation fans at the northeast and northwest corners of House 5, and ventilation fans at the northeast and northwest corners of House 6;
 - Ventilation fans at the northeast corner of House 5, approximately 15 feet from Ditch 1, with exhaust dust from the ventilation fans covering vegetation in and along Ditch 1;
 - Ventilation fans at the northwest corner of House 5, approximately 30 feet from Ditch 2, and the northeast corner of House 6, approximately 15 feet from Ditch 2, with exhaust dust from the ventilation fans covering vegetation in Ditch 2 and on the soil surface in Ditch 2;
19. Upon information and belief, dust from the ventilation fans is deposited in Ditch 1 and Ditch 2. Furthermore, upon information and belief, dust from the ventilation fans includes fine particulates of dander and manure. The dust was exposed in a manner such that it would come into contact with precipitation and generate process wastewater.
20. According to United States Geological Society ("USGS") topographic maps, Ditch 1 continues north for approximately 1,970 feet after leaving the Facility before entering Bullbeggar Creek.
21. According to the Southeast Regional Climate Center (<http://www.sercc.com/>), Princess Anne, Maryland, located 17 miles north of the Facility, receives 42.97 inches of precipitation annually, and Painter, Virginia, located 29 miles south of the Facility, receives 43.91 inches of precipitation annually.
22. At the time of the inspection and the date of the issuance of this Order, Respondent possessed a Virginia Pollution Abatement General Permit for Poultry Waste Management (#VPG250098).
23. At the time of the inspection and the date of the issuance of this Order, Respondent did not have, nor had applied for, a CWA NPDES Permit for the Facility.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

24. FPNA Farms Incorporated is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
25. The Facility includes six poultry houses that together confine 164,000 broiler chickens for 45 days or more in any twelve-month period. No crops, vegetation, forage growth, or post-harvest residues are sustained in the normal growing season over any portion of the Facility where the broiler chickens are confined.
26. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
27. Respondent confines at least 125,000 chickens; therefore, the Facility is a Large CAFO, as that term is defined in 40 C.F.R. § 122.23(b)(4)(x).
28. Bullbeggar Creek is a Water of the United States, as defined by 40 C.F.R. § 122.2.
29. The Facility is designed, constructed, operated, and maintained in a manner such that a discharge will occur to Bullbeggar Creek via a series of ditches, and is therefore proposing to discharge.
30. Pursuant to 40 C.F.R. § 122.23(d), which became effective on December 22, 2008, the owner and/or operator of a large CAFO that proposes to discharge is required to apply for an NPDES permit by February 27, 2009.
31. At the time of the inspection and the date of the issuance of this Order, Respondent did not have, nor had applied for, a CWA NPDES Permit for the Facility.
32. The failure to have a CWA NPDES Permit and not to have applied for a CWA NPDES Permit by February 27, 2009 for the Facility constitutes a violation of the CWA and 40 CFR § 122.23(d).

V. ORDER FOR COMPLIANCE/INFORMATION REQUEST

33. Therefore, this _____ day of _____, 2010, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to submit a registration statement and required attachments for permit coverage under the VPDES General Permit for CAFOs to DEQ within thirty (30) days upon receipt of this Order. A copy of all submitted documents shall also be sent to EPA.
34. Upon obtaining permit coverage from DEQ, Respondent shall submit a copy of the permit and any correspondences from DEQ to EPA within ten (10) days.

VI. NOTICE OF INTENT TO COMPLY

35. **Within ten (10) business days** of the effective date of this Order, Respondent shall submit to EPA a notice indicating whether Respondent will comply with the Order. The notice and all other requests outlined above shall be submitted to:

Mr. Mark Zolandz
United States Environmental Protection Agency
NPDES Enforcement Branch (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

VII. GENERAL PROVISIONS

36. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil or criminal action to seek penalties, fines or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act can result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).
37. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, 33 U.S.C. § 1319(c), Respondent may be subject to a monetary fine and/or imprisonment and may become ineligible for certain contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
38. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of his/her obligations to comply with any applicable federal, state, or local law or regulations.

VIII. EFFECTIVE DATE

39. The Order shall be effective upon receipt by Respondent.

Date: _____

_____/S/_____
Jon M. Capacasa, Director
Water Protection Division